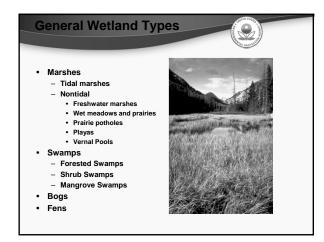
Clean Water Act Section 404 Regulatory Training Course: Introduction/Overview June 8, 2015 Philadelphia, PA

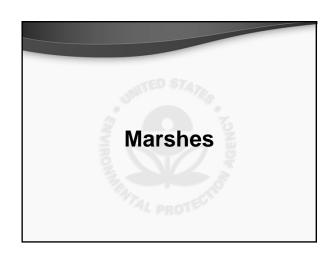
Training Course Purpose To provide an overview of Sec

To provide an overview of Section 404 of the Clean Water Act for Federal, State, and Tribal staff working with or within the aquatic resources regulatory program.

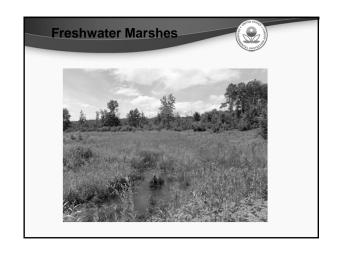


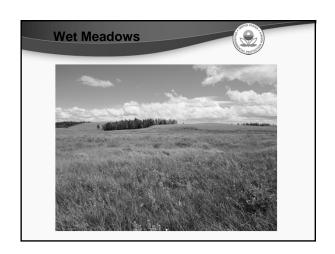
Pish and wildlife habitat Flood protection Erosion control Water quality Drinking water Recreation/education opportunities Pish and wildlife habitat Flood protection Erosion control Water quality Drinking water Recreation/education

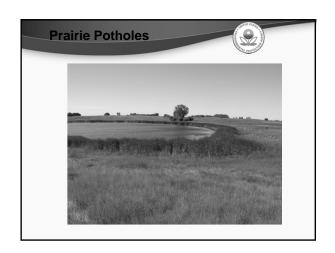


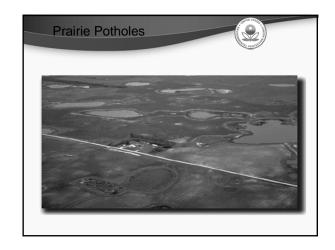


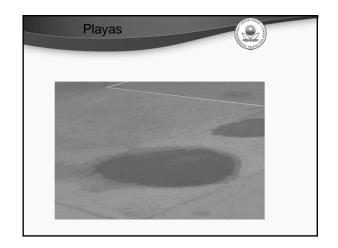




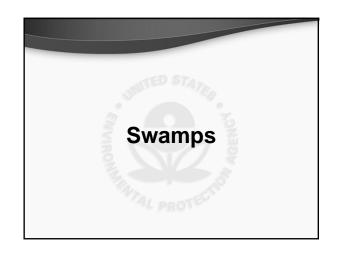


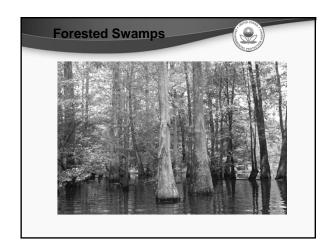


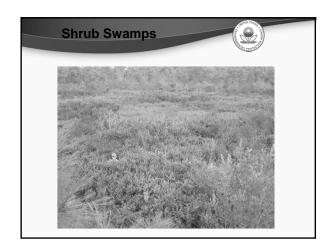






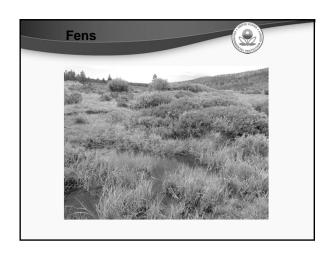


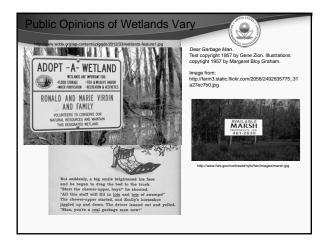












Wetlands: Status and Trends



- Approximately 220 million acres in 1700 (lower 48)
- 105.5 million acres today (size of CA)
- 1950 1970 was a time of major losses
- Rate of loss has decreased over last 30 years
- Losses come (roughly) equally from urban development, rural development, forestry, and agriculture activities.

Wetlands: Status and Trends

March 2006 - Fish & Wildlife Service released the Status & Trends report for 1998-2004

- 1st ever reported gain by FWS
- Net gain of 191,750 wetland acres
- Annual average gain of approx.
 32,000 acres



Wetlands: Status and Trends

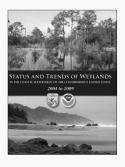
October 2011 - Fish & Wildlife Service released the Status & Trends report for 2004-2009

- There were an estimated 110.1 million acres of wetlands in the conterminous U.S. in 2009
- Wetland area declined by an estimated 62,300 acres between 2004 and 2009.
- This was not a statistically significant change since the 2004 report.



Wetlands: Status and Trends

- October 2013 Release of report focusing on status and trends of wetlands in coastal watersheds for 2004-2009.
- Average annual rate of wetland loss in coastal watersheds was 80,160 acres.
 - This is a 25% increase from the previous reporting period
- Principle causes for losses included coastal storms, urbanization, and silviculture operations.



National Wetland Condition Assessment

- EPA effort to assess the ecologic condition of nation's wetlands
 - Data currently undergoing analysis for biologic and abiotic indicators of wetland condition
 - Draft report end of 2014
- Implications and uses of data Information on wetland condition

 - Relationships between stressors and overall condition

 - Factors leading to higher quality wetlands could help inform wetland restoration
 Reference network of high-quality wetlands
 - Assessment and analytical techniques to evaluate wetland quality nationally and in other wetland M&A efforts





Legal Background



- Rivers and Harbors Act of 1899
- EPA established in 1970
- Water Pollution Control Act Amendments of 1972
 - "...to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."
- 1977 Clean Water Act
 - Reauthorized and expanded '72 Act

Clean Water Act, Section 404(a)



"The Secretary [of the Army] may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites."

CWA 404 Program



- Section 404 establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including
 - Oceans
 - Territorial seas
 - Lakes
 - Rivers and streams
 - Wetlands

Corps Regulations



- Regulatory Jurisdiction
 - 33 CFR § 328 & § 329
- Issue/Deny Permits
 - 33 CFR § 320- § 330
- Mitigation to Offset Impacts
 - 33 CFR § 325.1(d) & § 332
- Enforcement
 - 33 CFR § 326

What is a Wetland?



"Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions"



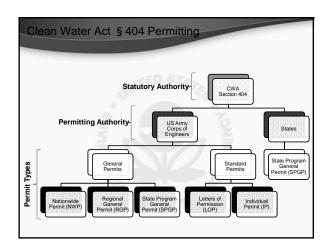


Clean Water Act Jurisdiction

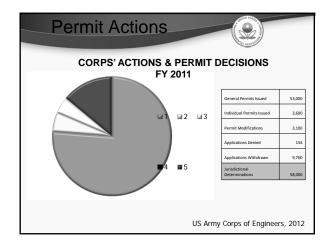


- Geographic jurisdiction
 - Which waters are jurisdictional
- Activity-based jurisdiction
 - Ditching & Dredging
 - AKA, "Tulloch" Rule
- Definitional
 - Fill Rule
- Exemptions





Application submitted to Corps of Engineers (or Authorized State/Tribe) Determination of permit type (general or standard) Public notice and solicitation of comments (except for projects with minimal impacts) Corps reviews application and includes conditions to ensure compliance Permit issued, application withdrawn, or application denied



Clean Water Act, Section 404(b)



Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary [of the Army] through the application of guidelines developed by the Administrator [of EPA], in conjunction with the Secretary [of the Army], which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean

404(b)(1) Guidelines



- Purpose is to restore chemical, physical, and biological integrity
- Prohibit discharges that result in unacceptable adverse environmental effects
- · Binding substantive rules
- Applicable to Section 404 Program, Corps' Civil Works Program and State-assumed 404 programs

General Restrictions established by the Guidelines



- Alternatives Analysis
 - LEDPA required
- Discharges may not:
 - violate WQ standards,
 - jeopardize T&E species
 - violate requirements protecting marine sanctuaries
- No significant degradation
- Must include measures to minimize adverse effects





U.S. Army Corps of Engineers

- administers day-to-day program
- makes individual and general permit decisions
- develops regulatory policy and guidance
- conducts or verifies jurisdictional determinations
- shares enforcement role with EPA
- ensures permits comply with 404(b)(1)
 Guidelines, NEPA, Historic Preservation Act, ESA. etc.











U.S. EPA

- develops environmental guidelines, policy, and guidance
- determines geographic scope of jurisdiction
- approves and oversees State assumption
- reviews permits
- maintains Section 404(q) "elevation" and (c) "veto" authority
- identifies exempt activities
- shares enforcement role with Corps











